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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,188	12/01/2000	Zefu Chen	6122/62344	4504
7590	02/02/2004		EXAMINER	
JAY H. MAIOLI Cooper & Dunham LLP 1185 Avenue of the Americas New York, NY 10036			LUGO, CARLOS	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N . 09/728,188	Applicant(s) CHEN ET AL
Examiner	Art Unit	
Carlos Lugo	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
 - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 December 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 01 December 2000 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). ____ .
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . 6) Other: ____ .

DETAILED ACTION

1. This Office action is in response to applicant's RCE filed on December 4, 2003.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claim 1 and 3-10 are rejected** under 35 U.S.C. 103(a) as being unpatentable over the admitted Prior Art disclosed from Page 2 Line 15 to Page 3 Line16 and illustrated on Figure 1 in view of US Pat No 4,527,711 to Harrell.

Regarding claims 1,3,4,6,8 and 9, the prior art discloses a cover latch comprising a pushing bar (2), a handle attached to one end of the bar and a support member attached to the other end of the bar. The latch further comprises a plurality of latches (6) attached to the support member and a plurality of springs (4) attached to the support member.

However, the Prior Art fails to disclose a pull rod having a circular cross section and a handle attached to the center of the pull rod. The Prior Art discloses a plastic push bar having a handle.

Harrell teaches a cover latch for a container comprising a pull a rod (11) that has a circular cross section, having a handle (12) attached to the center of the pull rod.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a pull rod, as taught by Harrell, into a cover latch as

described by the Prior Art, because it will be consider as a reversal of components, from pushing to pulling, that will not affect the disengaged of the latches from the catches in order to open or close the cover.

As to claim 5, the Prior art illustrates that the support member is formed in a U-shape.

As to claim 7, the Prior Art illustrates that the plurality of springs is leaf springs.

As to claim 10, the Prior Art illustrates that the support member and the plurality of latches and springs are formed as a single unit.

4. **Claim 2 is rejected** under 35 U.S.C. 103(a) as being unpatentable over the admitted Prior Art disclosed from Page 2 Line 15 to Page 3 Line16 and illustrated on Figure 1 in view of US Pat No 4,527,711 to Harrell and further in view of US Pat No 4,129,325 to Hern et al (Hern).

The Prior Art, as modified by Harrell, discloses the invention substantially as claimed. However, the combination fails to disclose the use of an O-ring arranged around the rod to seal an opening in the dispenser.

Hern teaches that a latch mechanism comprising an O-ring (element 86) arranged around the pull rod (element 70) to seal an opening (on the wall 24) through which the rod is pulled using the handle is known in the art.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a similar seal element like the one illustrated by Hern, into the combination, in order to prevent humidity or any other element to enter the dispenser.

5. **Claim 1 and 3-10 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,131,773 to Wade et al (Wade '773) in view of US Pat No 4,527,711 to Harrell.

Regarding claims 1,3,4,6,8 and 9, Wade '773 discloses a cover latch comprising a thin plastic pushing bar (78), a handle attached to one end of the bar and a support member (60) attached to the other end of the bar. The latch further comprises a plurality of latches (80 and 88) attached to the support member and a plurality of springs (160) attached to the support member.

However, Wade '773 fails to disclose a pull rod having a circular cross section and a handle attached to the center of the pull rod. Wade '773 discloses a push bar having a handle.

Harrell teaches a cover latch for a container comprising a pull a rod (11) that has a circular cross section, having a handle (12) attached to the center of the pull rod.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a pull rod, as taught by Harrell, into a cover latch as described by Wade '773, because it will be consider as a design consideration because it will have the same purpose of disengage the latches from the catches in order to open or close the cover.

As to claim 5, Wade '773 illustrates that the support member is formed in a substantially U-shape.

As to claim 7, Wade '773 illustrates that the plurality of springs is leaf springs.

As to claim 10, Wade '773 illustrates that the support member and the plurality of latches and springs are formed as a single unit.

6. **Claim 2 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,131,773 to Wade et al (Wade '773) in view of US Pat No 4,527,711 to Harrell and further in view of US Pat No 4,129,325 to Hern et al (Hern).

Wade '773, as modified by Harrell, discloses the invention substantially as claimed. However, the combination fails to disclose the use of an O-ring arranged around the rod to seal an opening in the dispenser.

Hern teaches that a latch mechanism comprising an O-ring (element 86) arranged around the pull rod (element 70) to seal an opening (on the wall 24) through which the rod is pulled using the handle is known in the art.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a similar seal element like the one illustrated by Hern, into the combination, in order to prevent humidity or any other element to enter the dispenser.

Response to Arguments

7. Applicant's arguments filed on December 4, 2003 have been fully considered but they are not persuasive.

Regarding applicant's arguments that Harrell fails to disclose or suggest a thin, plastic pull rod with a two handed handle (Page 7 Line 17), the Prior Art, as modified by Harrell, discloses this limitation.

Harrell is used only to show that it is known in the art to have a pull rod with a two-handed handle (a handle that can be used by either hand). The Prior Art already discloses the limitation thin and plastic.

As to applicant's arguments that there is no motivation for combining the teachings of the Prior Art with the teachings of Harrell (Page 7 Line 20), a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill without any specific hint or suggestion in a particular reference. *In re Bozek*, 416 F. 2d 1385, 1390 163USPQ545, 549 CCPA 1969. In this case, one ordinary skill in the art would combine references because the fact that the latch is open by pulling the rod, instead of pushing the rod, is mere a design consideration that would not affect or improve the latch mechanism.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Page 8 Line 16), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As to applicant's arguments to the reversal of components (Page 9 Line 7), the present application is just modifying from a push bar to a pull rod. That mere "difference" it is considered as a reversal of components of a prior art.

The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number is 703-305-9747. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

Carlos Lugo
Examiner
Art Unit 3677

January 21, 2004.



ROBERT J. SANDY
PRIMARY EXAMINER